IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 272 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKOR BHEMSING SVARUPJI

Versus

DY. ENGINEER

Appearance:

MR CL SONI for Petitioner

MR AD OZA for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 13/01/2003

ORAL JUDGEMENT

1. Heard learned Advocate Mr. C.L. Soni for the petitioner and Mr.A.D.Oza, learned GP for the respondents. This Revision Application is filed against an order of Second Jt. District Judge, Banaskantha

District at Deesa passed on 6th of November, 2001 in Misc. Civil Appeal No.68/95. Present petitioner filed a Regular Civil Suit No. 297/94 against the Executive Engineer and Chairman of the Gujarat Electricity Board for permanent injunction, in which the present petitioner - plaintiff preferred an Application at Exh.5 under Order 39 Rules 1 & 2 of the Civil Procedure Code for the interim injunction. The said application came to be dismissed by learned Civil Judge (JD) at Deesa on 20.7.1995. Against which the plaintiff preferred Civil Misc. Appeal No.68/95 in the Court of Jt. District Judge, Banaskantha at Deesa.

2. Learned Civil Judge (JD) decided the Application Exh.5 in Regular Civil Suit No. 297/94 on merits holding that plaintiff had no prima facie case in his favour and that the conduct of the plaintiff should not entitle him to have equitable relief of injunction. While learned Jt. District Judge in Misc. Civil Appeal No.68/95 came to the conclusion that in fact the Civil Judge (JD), Deesa, had no pecuniary jurisdiction to grant any ad interim relief. He therefore refused to entertain the same and dismissed the appeal which is the subject matter of this Revision Application. Learned Advocate for the petitioner Mr. Soni urged that the learned Jt. District Judge ought to have disposed of the Appeal on merits, instead the effect of the order of lower appellate court amounts to dismissal of the suit. According to the learned Advocate this can be done only as per Order 7 R. 10 of the Civil Procedure Code and plaint is required to be returned. Learned Advocate therefore urged that the order is illegal.

3. The present Revision Application is purely barred by proviso of Section 115 of the Civil Procedure Code by Amending Act No. 46/1999. Otherwise also the lower appellate court has dismissed and confirmed the rejection of the application of temporary injunction of the plaintiff. By no stretch of reasoning, it can be said that the lower appellate court ought not to have dismissed the appeal on the ground that learned Civil Judge (JD) had no jurisdiction. Therefore this Court is unable to accept the contention of the learned Advocate for the petitioner. Further be it noted that vide Amendment made in the Civil Procedure Code under Section 115, a ground available to the revisionist to prefer revision on occasion of failure of justice, is also taken away. Therefore, even if it is a failure of justice, the Revision is not entertainable.

3. In this view of the matter this Revision

Application stands dismissed. Notice is discharged.

(J.R. Vora, J.)

p.n.nair